IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S. RAO

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WRIT PETITION No.4304 of 2003

Between:

Greeting Corner a Proprietary concern

Rep. by its Proprietor Sri A. Sudhakar,

Carrying on business at MCH Commercial Complex,

Secunderabad.

..... PETITIONER

AND

1. State of Andhra Pradesh, Rep. by its Secretary,

Ministry of Municipal Administration,

Secretariat Buildings, Hyderabad.

2. Municipal Corporation of Hyderabad, represented by its

Commissioner, Tank Bund Road, Hyderabad.

3. The Officer on Special Duty (CPP) (Advertisement Section)

Municipal Corporation of Hyderabad, Tank Bund Road,

Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, direction or order more particularly a writ in the nature of Certiorari calling for the records in connection with the Order dated 05.03.2003 in No.243/AD3/Advt/MCH/2002/140 passed by the third respondent herein and by quashing the same.

Counsel for the Petitioner: MR.KISHORE RAI

Counsel for the Respondent No.1: G.P. FOR MUNICIPAL ADMINISTRATION

Counsel for the Respondent Nos.2 and 3: Ms. G. JYOTHI KIRAN, Standing Counsel for MCH

The Court made the following:

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.4304 OF 2003

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ORDER:

Greeting Corner, petitioner herein, is a proprietary concern carrying on business of selling various greeting cards and other stationary items. The proprietor of the petitioner obtained trade licence from Municipal Corporation of Hyderabad (for short, the Corporation). The petitioner displayed name board of his trade on the premises tenanted for the business for the last fourteen years. When the officials of the Corporation, the second respondent herein, directed the petitioner to remove name board affixed to the premises, the petitioner filed a writ petition being W.P.No.13315 of 2002 seeking a declaration that the action of the Corporation in directing the petitioner to remove the name board as illegal and arbitrary. This Court by order dated 26.08.2002 directed the Corporation to issue notice to the petitioner and afford an opportunity of being heard and then pass appropriate orders within a period of two months thereafter. The Corporation thereafter issued a notice dated 04.10.2002 requesting the petitioner to regularise the erection and display of two glow sign boards by paying requisite advertisement fee to the Corporation. The petitioner submitted explanation and on 26.10.2002 the petitioner was afforded personal hearing. Thereafter the Officer on Special Duty (CPP) passed impugned order dated 05.03.2003 informing the petitioner that Section 421(1)(b) of the Hyderabad Municipal Corporation Act, 1955 (the HMC Act, for brevity) applies to only non-illuminated advertisements and not to the illuminated boards erected by the petitioner and accordingly the petitioner was asked to regularise the erection of display of two glow sign (illuminated) boards by paying requisite advertisement fee.

This Court admitted writ petition on 12.03.2003. Thereafter, miscellaneous application being W.P.M.P.No.5660 of 2003 was listed before this Court on at least four occasions when there was no representation for the petitioner and the learned

counsel for the petitioner was absent. On 13.10.2004, learned counsel for petitioner appeared and made submissions. After disposal of miscellaneous application, nothing would have remained in the writ petition and therefore the matter was heard finally.

Learned counsel for petitioner submits that the petitioner has displayed digital printed flexi board to his premises for the purpose of identification of the trade of the petitioner. Though it is illuminated for the purpose of feasibility to the customers in the night, the same is exempted under the proviso to sub-section (1) of Section 421 of the HMC Act and therefore it is illegal on the part of the Corporation to direct the petitioner to regularise the advertisement by paying the advertisement fee. The learned counsel strenuously contends that the illuminated board does not amount to advertisement and it is only display of board for the identification of the trade of the petitioner. **Per Contra**, the learned Standing Counsel for Corporation submits that under Section 421 of the HMC Act, an advertisement which relates to trade or business carried within the land and fixed upon any building is only exempted under the proviso to sub-section 421(1) of the HMC Act but when such advertisement relating to trade or business is illuminated or is a sky sign, the same attracts Section 421(1) of the Act. He placed reliance on the decision of this Court in **Asian Paints India Limited v Additional Commissioner (Finance), MCH**.

The only point that arises for consideration is whether the illuminated digital printed flexi board fixed by the petitioner to his premises for the purpose of identification is exempted under Section 421(1) of the HMC Act?

Along with the writ petition, the petitioner has annexed a recent photograph of the business premises of the petitioner taken during nighttime, which is found to be illuminated. Therefore, whether illuminated board even for the purpose of identification is exempted from payment of advertisement tax or not is the question. Section 421 of the HMC Act reads as under:

421. Regulation and control of advertisements:

(1) No person shall without the written permission of the Commissioner, erect, exhibit, fix or retain any advertisement whether now existing or not, upon any land, building, wall, hoarding or structure:

Provided always that such permission shall not be necessary in respect of any advertisement which is not an illuminated advertisement nor a sky-sign and which-

a. is exhibited within the window of any building;

b. relates to the trade or business carried on within the land or building upon which such advertisement is exhibited or to any sale or letting of such land or building or any effects therein, or to any sale, entertainment or meeting to be held upon or in the same or to the trade or business carried on by the owner of any vehicle upon which such advertisement is exhibited.;

c. relates to the business of any railway administration;

d. is exhibited within any railway station or upon any wall or other property of a railway administration except portion of the surface of such wall or property fronting any street.

(2) Where any advertisement shall be erected, exhibited, fixed or retained after three months from the enactment of this section upon any land, building, wall, hoarding or structure save and except as permitted or exempted from permission as hereinbefore provided, the owner of person in occupation of such land, building, wall, hoarding or structure shall be deemed to be the person who has erected, exhibited, fixed or retained such advertisement in contravention of the provisions of this section unless he proves that such contravention was committed by a person not in his employment or under his control or was committed without his connivance.

(3) If any advertisement be erected, exhibited, fixed or retained contrary to the provisions of this section after the written permission for the erection, exhibition, fixing or retention thereof for any period shall have expired or become void, the Commissioner may, by notice in writing, require the owner or occupier of the land, building, wall, hoarding or structure upon which the same is erected, exhibited, fixed or retained, to take down or remove such advertisement.

(4) (a) The word “structure” in this section shall include a tramcar, omnibus and any other vehicle and any movable board used primarily as an advertisement or an advertising medium; and

(b) the expression “illuminated advertisement” in this section shall not include an illuminated display of goods if such display –

i. is of goods merely bearing labels showing the name of the article or of its manufacturer or of both; and

ii. is made by lighting which is not, in the opinion of the Commissioner, more than is necessary to make the goods and labels visible at night.

In **Asian Paints case** (supra), this Court considered the scope of Section 421(1) of the HMC Act and laid down as under:

7. The submission, I am afraid, is wholly misconceived. As per the proviso to sub-section (1) of Section 421, the following advertisements can be erected, depicted or fixed without the written permission of the Commissioner;

(i) an advertisement which is exhibited within the window of any building;

(ii) an advertisement which relates to the trade or business carried on within the land or building upon which such advertisement is exhibited;

(iii) an advertisement which relates to the business of any railway administration;

(iv) an advertisement which is exhibited within the railway station or upon the property of railway administration;

8. The proviso further says that the exemption granted by it shall not extend to any of the above categories of advertisement if the advertisement is illuminated one or which is a sky-sign. Clause (b) of sub-section (4) lays down that the expression 'illuminated advertisement' shall not include an illuminated display of goods if such display is of goods 'clearly bearing label showing the name of the article or of its manufacturer or both and such illuminated display is made by lighting which is not more than necessary in the opinion of the Commissioner.

10. It is not denied that the petitioner company is supplying illuminated boards and that the respondent has issued a notice deciding that the illuminated advertisement boards of the petitioner come within the purview of Section 421 of the Act. This only shows that in the opinion of the Commissioner, as per sub-clause (ii) of clause (b) of sub-section (4) of Section 421 of the Act, the 'illuminated advertisement boards of the petitioner company are more than necessary' and therefore, they are non-excluded category of advertisements attracting rigour of sub-section (1) of Section 421. It has, therefore, to be held that the impugned notice cannot be held to be illegal on that ground.

In the present case, as admitted in paragraph six of the affidavit accompanying the writ petition as well as from the photograph taken during night time, it becomes clear that the petitioner has displayed an illuminated advertisement fixed to his premises and therefore the same attracts Section 421(1) of the HMC Act. Therefore, the Corporation was justified to issue impugned order requiring the petitioner to regularise the same. I do not find any illegality in the same.

The writ petition is devoid of merits and is accordingly dismissed.

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(V.V.S.RAO,J)

13.10.2004.

pln

To

1. The Secretary, Ministry of Municipal Administration,

Government of Andhra Pradesh, Secretariat Buildings, Hyderabad.

2. The Commissioner, Municipal Corporation of Hyderabad,

Tank Bund Road, Hyderabad.

3. The Officer on Special Duty (CPP) (Advertisement Section)

Municipal Corporation of Hyderabad, Tank Bund Road,

Hyderabad.

4. Two CCs to the Government Pleader for Municipal Administration,

High Court Buildings, Hyderabad (O.U.T)

5. Two C.D. Copies.